

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FURNITURE DIRECT, INC.
d/b/a EMES BEDDING

and

Case Nos. 4-CA-33172
4-CA-33602

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 837, AFL-CIO

Barbara C. Joseph, Esq.,
for the General Counsel
Bridget E. Clarke, Esq.,
of Philadelphia, PA
for the Charging Party
Jay Gold, of Philadelphia, PA
for the Respondent

DECISION

Statement of the Case

Eric M. Fine, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on May 10, 2005. The charges in Cases 4-CA-33172 and 4-CA-33602 were filed by the International Brotherhood of Teamsters, Local 837, AFL-CIO (the Union) on June 24, and December 22, 2004, against Furniture Direct, Inc., d/b/a EMES Bedding (Respondent).¹ The consolidated complaint issued on February 24, 2005, and alleges Respondent violated Section 8(a)(1) and (5) of the Act by canceling or failing to appear at bargaining sessions scheduled for March 29 and 30, August 2, September 9, October 12, December 15, 2004, and February 8, 2005, and that from October 12 to November 29, Respondent failed and refused to respond to requests made by or on behalf of the Union to schedule a bargaining session.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the oral argument at the hearing by counsel for the General Counsel and the brief filed by Respondent, I make the following²

¹ All dates are in 2004 unless otherwise stated. The Regional Director for Region 4 issued a dismissal of the charge in Case 4-CA-33172, on August 31, 2004, on condition Respondent's future conduct at bargaining comport with its statutory requirements. On February 24, 2005, based on review of Respondent's subsequent conduct, the Regional Director partially reinstated the charge in Case 4-CA-33172, and included those allegations in the consolidated complaint.

² In making the findings herein, I have considered the witnesses' demeanor, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation*, 179 F. 2d 749, 754 (C.A. 2), reversed on other grounds 340 U.S. 474 (1951). All testimony has been considered, if certain aspects of a witness's testimony are not mentioned it is because it was not credited, or cumulative of the credited testimony set forth above. Further

Continued

Findings of Fact

I. Jurisdiction

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Respondent, a corporation, has been engaged in the manufacture of mattresses and bedding foundations at its facility in Philadelphia, Pennsylvania, from where it annually purchases goods valued in excess of \$50,000 directly from points outside the state of Pennsylvania. The Respondent admits and I find it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. Alleged Unfair Labor Practices

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Jay Gold is Respondent's president and an admitted statutory supervisor and agent of Respondent. The Union won an election and was certified to represent Respondent's employees on March 2, 2004, in a unit of:

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All full time and regular part-time production, warehouse and maintenance employees employed by Respondent at its 620 East Erie Avenue, Philadelphia, PA facility; excluding all drivers, professional employees, sales employees, office clerical employees, guards and supervisors as defined in the Act.

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Robert Gunning is a field representative with the Union. Gunning attended all the parties' negotiation sessions and replaced Union Vice President and Business Agent Frank Narducci as the Union's chief negotiator. Union President John Dulczak also attended one meeting.

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By letter dated March 11, Dulczak requested Gold to contact Dulczak's office to arrange a meeting to begin negotiations for a collective bargaining agreement. Gunning credibly testified that following the March 11, letter, Gunning had conversations with Gold resulting in negotiation sessions being set up for March 29 and 30.³ These two sessions never took place as Gold canceled them. Gold sent a fax to Dulczak, dated March 26, which was a Friday, Gold told Dulczak he had to cancel their Monday, March 29, meeting because his family was going out of the country on Tuesday, and he had a few things to take care of.

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The parties' first bargaining session was held on April 5. Dulczak, Narducci, Gunning, Gold, and Federal Mediator Jon Numair attended and the Union presented its initial contract proposal. Gunning testified the meeting was very short, as Gold stated he forgot his glasses.

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By certified letter dated April 15, Dulczak asked Gold to review the Union's contract proposal and for Gold to contact the Union to set up a negotiation schedule. It is stated in the letter the Union made several unsuccessful attempts to contact Gold by phone. Gunning credibly testified he attempted to contact Gold by phone subsequent to the April 5 meeting. Gold was never available, and he failed to return Gunning's calls. Gold responded by letter

discussions of the witnesses' testimony and credibility are set forth throughout this decision.

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³ Considering demeanor, and the content of his testimony, most of which was uncontraverted or supported by documentary evidence, I found Gunning to be a credible witness.

dated April 16, stating he was reviewing the Union's proposal and would respond with a letter with questions and an opinion at the beginning of the following week.

Gunning testified the next meeting date was May 12. Gunning attended with Narducci, Gold, and Numair. Gold presented a written request for information during the meeting seeking the following information for each of the Union's health and welfare plan, pension plan, and 401(k) plan: a copy of the plan; summary plan description; trust agreement, most recent form 5500 with all attachments; most recent actuarial studies; costs by total and by plan participant for providing benefits for the last three years; current costs for providing benefits; future projected costs; a list of all litigation against the plan; copy of any DOL audit notices; copy of all documents that would be requested to be signed. Gold also requested a copy of the Union's proposed collective bargaining agreement on a computer disc.

Gunning testified that following the May 12 meeting, another meeting was set for May 25. Gold cancelled the May 25, meeting by fax to the Union dated May 21. Gold copied the fax to Numair. Gold stated they should cancel their meeting until the Union forwarded the requested information to Gold. Dulczak responded to Gold by fax dated May 21, copied to Numair. Dulczak stated there were non economic issues that had yet to be discussed, and that they had not discussed any monetary issues. Dulczak stated they should move forward with negotiations as scheduled, and that any items Gold might request that were relevant would be provided at the next meeting. Gold wrote an undated letter to Dulczak in response stating Gold preferred to wait and meet with the Union on June 17, when Numair would be available.

Gunning testified that, despite his letters canceling the May 25 meeting, Gold subsequently agreed to meet on May 25. However, late in the afternoon on May 25, Gold faxed a letter to Dulczak stating, "This morning we had a meeting that I did not attend. I had an urgent situation that I had to take care of. I was under a lot of pressure and forgot to call you back. I'm sorry; I had full intention of making the meeting. Again, I apologize." In the letter, Gold asked that all future meetings take place in a location other than the union hall. Gold's letter was copied to Numair.

Gold also wrote a letter to Dulczak, dated May 25, stating he was not prepared to meet on June 18, until he received the information he had previously requested from the Union.⁴ Gold repeated his request for Dulczak to forward a copy of the Union's proposed contract on a computer disc. Gunning wrote Gold a letter dated June 15, stating that, as per their phone call of that date, concerning Gold's request for Health, Welfare and Pension Fund information, the Union was no longer interested in offering Respondent an opportunity to join the fund, and the Union's offer on those issues was withdrawn. Concerning a request for the Union's contract proposal on a disc, it was stated the Union submitted the proposal on hard copy and that if Gold wanted it on disc, it could be done at Gold's expense. The letter stated the Union was looking forward to meeting with Gold on Friday June 18, at 11 a.m. at the Federal Mediation office to go forward with contract negotiations.

Gold responded by letter dated June 16, canceling the parties' June 18 meeting. Gold stated now that the Union had withdrawn any health, welfare and pension benefit demands, he needed time to "re-review your proposals in preparation for our next bargaining session." Gold stated the parties should agree to provide each other with contract proposals in electronic format to save typing time. He also asserted there was no expense in providing Respondent

⁴ Gold had mistakenly referenced the scheduled meeting as June 17 in this letter, but sent a follow up fax stating he was referring to the June 18 meeting.

with the Union's computer file. Gold stated absent the Union's agreement to provide proposals in an electronic format, Gold would have the proposals retyped which would add further delay to the matter.⁵ Gold asked for three alternative dates for contract negotiations, and once he received those he would respond promptly concerning his availability. The June 18 meeting did not take place.

By letter dated June 21, Dulczak wrote Gold stating, "We were extremely disappointed that you once again cancelled a scheduled (meeting) for Friday, June 18, 2004. This is not the first time you cancelled a meeting with little or no notice." Dulczak asked Gold to contact the Union's office immediately in an "effort to finalize the contract." By letter dated June 21, Dulczak sent a copy of his June 21 letter to Numair. Dulczak stated in his letter to Numair, "The Company has continuously cancelled our scheduled meetings. We are requesting that you and your Office intercede and bring the Company back to the bargaining table."

On June 30, Numair sent a letter to Gold and Dulczak confirming a conversation and agreement with each that negotiations would resume on July 15 and July 19 at the FMCS office in Philadelphia. Gunning testified the July 15 and 19, meetings took place.

Gunning testified the next session was set for August 2. However, Gold cancelled the August 2, session by letter of July 24, stating he had to attend a furniture show, and the meeting had to be rescheduled. The Union received the letter on July 27. Gold did not offer alternative dates for the August 2 meeting. By letter to the parties dated July 28, Numair scheduled a meeting for August 19, at 1 p.m. Numair stated the meeting was by agreement by the parties.

The parties met on August 19, with the mediator. By letter dated August 24, Narducci wrote Gold stating that, in the presence of the mediator, Gold agreed to contact the Union on August 23 to set up meetings with the mediator on either September 7, 8, or 9. The letter states efforts to reach Gold by phone were unsuccessful and asked for a response as soon as possible. Gold responded by fax dated August 24, stating that September 8 or 9, looked good for a meeting date after 5 p.m. Gunning testified he attended a scheduled September 9 bargaining session at Numair's office, but Gold did not show up. Gunning did not recall Gold calling to cancel the meeting. Gunning testified Gold did not initiate any calls to set up any other meetings. Gunning testified there were no meetings in September.

Gunning testified the next meeting was arranged by Numair and was scheduled for October 12. By letter dated October 2, Gold wrote Dulczak, in reference to the proposed October 12, meeting date. Gold stated the Union provided a proposed agreement at the beginning of the year, which included health, welfare, and pension benefits. Gold stated that on May 12, Gold made an information request, and the Union never provided the information. Rather, the Union elected to drop the health, welfare and pension fund out of the contract. Gold stated the Union changed its mind and decided to leave the health benefit in the contract. Gold stated, "Therefore I'm choosing not to meet at this time and wait until you furnish me with the information that I asked you for."

By letter dated October 4, to Gold, and copied to Numair, Dulczak referenced Gold's October 2 letter canceling the negotiation session scheduled for October 12. Dulczak stated

⁵ The Union never provided a copy of its contract proposal in an electronic format to Gold. Gunning testified he is not computer literate and he inquired with the Union's office staff and was told the Union did not have the contract proposal in electronic format.

you state you will not meet until you receive the voluminous information you requested concerning the Union's health care plan. Dulczak went on to state:

5 ...Please be advised that Local 837 has withdrawn that demand from the table; as you know, it had previously withdrawn the proposal, only to place it back on the table at the most recent negotiation. This was done in error. In any event, this letter will confirm that the Union is not, as part of its proposals, seeking to have your company adopt the Union's health care plan.⁶

10 With this obstacle out of the way, it is hoped we can start moving these negotiations along. As you know, we had had a number of sessions. However, virtually nothing has been accomplished in these sessions, primarily due to your refusal to regularly attend scheduled meetings, and insisting that you can only meet at 5:00 p.m. for sessions. Furthermore, you continue to cancel bargaining sessions at an alarming frequency. As you know, the National Labor Relations Board has already determined that your habit of
15 constantly canceling meetings is an unfair labor practice, but has deferred any action pending your "behaving" at subsequent sessions. If you continue this practice of delay, and avoiding the reaching of any meaningful agreement, Local 837 will have no recourse other than to go back to the Board and advise it of the status of negotiations.

20 We are available to meet and bargain with you on Tuesday, October 12, 2004, at 5:00 p.m. Please contact me immediately so that we may confirm that session.

25 Gunning testified Gold did not attend the October 12, meeting. Gunning testified he learned Gold was canceling the meeting on October 12, when someone from Gold's office called the Union office at about 4:50 p.m. while the Union officials were on route to the meeting. Gunning testified the Union officials were five minutes away from the meeting location at the time they received the cancellation notice, after making a fairly substantial commute.

30 By letter dated November 15, Numair wrote Gold that he spoke with Gold on November 1 about renewing bargaining between Respondent and the Union. Numair stated Gold asked for a few days to allow Gold time to speak to his doctor and consider his calendar. Numair stated Gold told him he would get back to Numair at the end of that week, and that Numair called Gold's office on November 9, to follow up his November 1, call. Yet, Numair had still not heard from Gold. Numair asked Gold to call him as his earliest convenience to schedule a new bargaining session.

35 By letter dated November 17, Gunning wrote to Gold that he had tried to contact Gold repeatedly by phone and left numerous messages with Gold's secretary with no response. Gunning stated the Union was available to meet at any date and time Gold wished, and that Gunning was waiting for his response to schedule a meeting. Gunning testified he repeatedly
40 phoned Gold, but Gold did not answer the calls, or provide return calls in response to messages.

45 ⁶ Gunning testified the Union did not provide most of the information requested in Gold's October 2 letter, which referenced Gold's prior information request made in May. Gunning testified the only information he provided to Gold was an estimate of the current costs of providing benefits, which was responsive to item seven in Gold's information request. Gunning gave Gold an estimate as to what it would cost Respondent if he was going through the Union's
50 fund to give him an idea. Gunning gave Gold this information sometime during the period of July to September.

Dulczak wrote Gold, in a letter dated November 29, stating Numair had informed Dulczak that Gold was available to meet on December 13 through 16 for negotiations, and that the Union had blocked off all four dates to accommodate Gold's schedule. Dulczak stated the Union had relayed that information to Numair. Dulczak stated in the letter that when Numair
 5 called Gold back, Numair was informed Gold was only available on December 15, at 1:30 p.m. Dulczak stated please be prepared to meet with us that day. However, Gunning testified Gold cancelled the December 15, meeting.

By fax dated December 17, Gold stated to Dulczak that he was refusing to meet with the
 10 Union for a meeting scheduled for December 21, unless Dulczak agreed not to enter Respondent's premises until a contract was signed. Gold stated "You come into the plant when you feel like it, and you interrupt my employees during working hours. I asked you not to do it before but you choose to repeat the same thing over and over again." Gold also stated the Union chose to use a federal mediator for negotiations and Dulczak should have no reason to
 15 call Gold. Gold stated all contacts should be done through Numair.

Dulczak responded by letter dated December 17, stating he had never been to Respondent's facility, and his communications to Gold had been through the mediator. Dulczak stated agents of the Union had been to Respondent's facility during the employees lunch and
 20 break time, and they had not interfered with employees working. Dulczak stated he expected Gold's presence at the December 21 meeting. Dulczak stated if Gold continued to bargain in bad faith, Dulczak would file additional charges with the Board. Gold responded by letter dated December 17, stating Union representatives came to Respondent's facility on December 13 and 14, and that on December 14, they entered the plant during non break time without notifying
 25 anyone. Gold stated the receptionist confronted one union official and he stated they had a right to come to the plant when they wish, and he also walked to the back. Gold stated the union representatives could talk to employees after work or at their homes. Gunning testified he went to the meeting scheduled for December 21, at Federal Mediation. The mediator and Gunning were there, but Gold did not attend. Gunning testified Gold was a no call, no show for
 30 the meeting.

Gunning testified there were two collective bargaining meetings in January 2005. Gunning testified they were not long meetings. Gunning testified there was a meeting set up for February 8, at 5 p.m. by Numair. However, Gold did not attend the meeting. Gold sent a fax to
 35 Gunning the day of the February 8 meeting stating "I'm sorry about this." Attached was a letter from a school principal stating Gold was at a meeting that day at the school concerning his son. Gunning testified he did not learn in advance that Gold was not going to attend the February 8 meeting. Gunning testified the Union did not receive Gold's fax canceling the meeting, until after the scheduled time of the meeting. Gold did not offer any alternative meeting dates in
 40 February. Gold testified the school called him to come in on the morning of February 8. He admitted he did not call the Union right away and notify them he had to cancel the session.⁷

45 ⁷ Gold testified there were two or three other times where he had to run to the school immediately because of his son which resulted in canceled meetings with the Union. Gold did not recall the months this took place. He testified he also did not tell the Union he was canceling meetings because of his son on those occasions. Gold testified there was an
 50 occasion in which he was hospitalized for about a week with a blood clot. Gold could not recall the month. Gold testified he had to cancel a meeting as a result and he called Gunning while Gold was on the way to the hospital. Gold did not attempt to schedule alternative dates.

Gunning could not recall if there was a meeting in March. Dulczak sent Gold a letter dated April 8, asking for Gold to contact the Union with available meeting dates. Gunning testified Gold did not respond to the April 8, letter. Gunning testified the mediator set up a meeting for May 5. Gunning testified Gold showed up but the meeting only lasted 10 minutes. Gunning testified Gold was supposed to present a counter offer to the Union's proposals. However, Gold stated he had no idea where the parties were at in the negotiations, that he had no records of what he had agreed to, or of language that was changed from the Union's original proposal.⁸

Gunning estimated that he called Gold around 70 times during March 2004 to March 2005 in an effort test set up meetings. Gunning testified there were only a few times that he spoke to Gold, and that Gold did not return his calls. Gunning estimated the Union only had 11 meetings with Gold from April 5, 2004 to May 5, 2005. Gunning testified the longest meeting was 35 to 40 minutes. Gunning testified the Union never terminated the meetings; rather Gold had to return to work. Gunning testified Gold never prepared any counter proposals, although both the Union officials and the mediator asked him to do so.

A. Analysis

In *Lancaster Nissan*, 344 NLRB No. 7, JD slip op. at 3 (2005), the following principles were set forth:

The Board has reiterated the central importance of the obligation to meet for bargaining on many occasions. In *J.H. Rutter-Rex Mfg. Co.*, 86 NLRB 470, 506 (1949), the Board stated that the obligation to bargain 'encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for collective-bargaining sessions when they are requested, and in the elimination of obstacles thereto, comparable to that which he would display in his other business affairs of importance.'

Recently, in *Calex Corp.*, 322 NLRB 977 (1997), the Board elaborated on this obligation by stating that 'considerations of personal convenience, including geographic or professional conflicts, do not take the precedence over the statutory demand that the bargaining process take place with expedition and regularity.' See also, *Caribe Staple Co.*, 313 NLRB 877, 893 (1994). Likewise, in *John Ascuaga's Nugget*, 298 NLRB 524 (1990), the Board described the obligation to meet at reasonable times as something that should be a part of the regular business of an employer, not something to be fitted in at odd times, when no other demands on an employer's time were being made.

⁸ Gold admitted he told the Union at the last session that they took very good notes on what took place at every session, and that Gold had not. Gold testified he told the Union to please revise their proposal and submit it to him so he could read it and go over it to see what the language was going to be so he could see it with the issues they had agreed on and had not agreed. Gold testified he never modified language from the Union's proposal and presented it to the Union. To the extent there is a conflict between Gunning and Gold as to what transpired at the May 5 meeting, I have credited Gunning's version of the event. Gold did not dispute that the meeting was very brief, and he displayed a pattern of behavior showing a total lack of interest in what transpired at negotiations with an intent to cancel as many meetings as possible while inconveniencing the Union officials in the process.

The Board has held in numerous cases that a party who limits and delays meetings has not met its obligation to meet and bargain, and has violated Section 8(a)(5) of the Act. In *Calex Corp.*, above, the fact that a respondent met only three times in a 3-month period, and cancelled other scheduled meetings was an indication of ‘purposeful delay’ by the respondent. Even though the parties in that case bargained for 15 months and had agreed on 75 percent of the contract, this limited progress was not a defense to the refusal to bargain violation. In *Caribe Staple Co.*, above, the parties, over the course of about 13 months, met and bargained only about one time per month, each time for only 2 or 3 hours, despite repeated requests by the Union for more frequent meetings. This dilatory meeting schedule was deemed by the Board a failure (of) the respondent’s obligation to meet and bargain. In *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1042 (1996), the respondent violated its duty to bargain by failing to meet at reasonable times. In that case the respondent refused to meet on weekends, and limited the bargaining sessions to evenings. The respondent limited the bargaining meetings to an average of only one meeting per month, and demonstrated an unwillingness to provide counterproposals in a timely manner. There the respondent cancelled meetings on short notice, thus precluding the Union from rescheduling to another date within the same time period.

In the instant case the Union was certified on March 2, and requested bargaining by letter dated March 11. Bargaining sessions were scheduled for March 29 and 30, but were cancelled by Gold the Friday before the Monday meeting because his family was going out of country on Tuesday. The parties met on April 5, for a very short meeting when the Union presented its initial contract proposal. Gold cut the meeting short stating he forgot his glasses. Following the April 5 meeting, the Union unsuccessfully attempted to contact Gold by phone.

The parties did not meet again until May 12, where Gold presented a written information request relating to the Union’s health and welfare plan, pension plan, and 401 k plan. Following the May 12 meeting another meeting was scheduled for May 25. However, Gold attempted to cancel the meeting with a fax to Dulczak, wherein Gold stated they should cancel their meeting until the Union provided him with the requested information. Dulczak responded they had non economic issues to discuss, that the meeting should go forward, and that relevant items would be provided at the next meeting. Gold then responded that he preferred to meet on June 17 when the mediator would be available. Despite his prior efforts to cancel the May 25, meeting, Gold agreed to attend the meeting which was scheduled for the morning. However, Gold failed to show up or call. Rather, he sent a fax after the fact apologizing for not being there, and for not calling, and merely giving the explanation that he had an “urgent situation” he had to take care of. In the same letter, Gold insisted meeting somewhere other than the Union hall, which could only foreseeably further inconvenience the Union by short notice cancellations and his failure to attend without notice.

Gold wrote a fax to the Union dated May 25, stating he was not prepared to meet with the Union for their scheduled June 18, meeting until he received the information he had requested. Gunning wrote Gold a letter dated June 15, confirming their phone conversation of that date where the Union had withdrawn its offer to have Respondent join the Union’s benefit funds, rendering Gold’s information request as no longer relevant. Gunning stated the Union wanted to preserve the parties’ scheduled June 18, meeting. Gold undeterred sent another letter dated June 16, canceling the parties’ June 18, meeting stating now that the Union had withdrawn its health, welfare, and pension benefits demands, he needed more time to review the Union’s simplified contract proposal, a copy of which he had had since April 5.

By letter dated, June 21, Dulczak remonstrated Gold for canceling the June 18 meeting,

stating it was not the first time he cancelled a meeting with little or no notice. While Dulczak asked Gold to contact the Union immediately to schedule a meeting, it was only by Dulczak's soliciting the mediator's assistance that meetings were scheduled were held on July 15 and 19.

5 Gold cancelled the next meeting scheduled for August 2, by letter received by the Union on July 27. Gold stated he had to attend a furniture show. Gold attended a meeting set for August 19, but Gold failed to attend a meeting scheduled at the mediator's office for September 9. Gold gave no notice for his failure to attend.

10 The next meeting was scheduled for October 12. However, by letter dated October 2, Gold wrote Dulczak stating the Union had reinserted the previously withdrawn health care proposal in its contract offer. Gold stated he was now choosing not to meet until the Union furnished him with the information he had requested on May 12. By letter dated October 4, Dulczak responded that the health care proposal had been placed back on the table by error, 15 and that the Union was not seeking to have Respondent adopt its health care plan. Dulczak complained of Gold's refusal to regularly attend bargaining sessions, his cancellation of sessions, and his insistence that the parties only meet after 5 p.m. Dulczak stated the Union was ready to meet on October 12. However, Gold did not attend the October 12, meeting, and he only notified the Union 10 minutes before the meeting was supposed to start, although he 20 knew the Union officials had to travel to the mediator's office to attend the meeting.

By letter dated November 15, Numair wrote Gold stating he had spoken to Gold on November 1, and Gold was supposed to get back to him by the end of the week to renew bargaining. However, Gold did not call nor did Gold return Numair's November 9, phone call. 25 Similarly, Gunning wrote Gold by letter dated November 17, stating he had tried to repeatedly contact Gold by phone and left numerous messages with no response. Gunning stated the Union was ready to meet at any date and time Gold wished, and was waiting for his response.

By letter dated November 29, Dulczak wrote Gold that Numair informed Dulczak that 30 Gold was available to meet on December 15. However, Gunning testified Gold cancelled the meeting. By fax dated December 17, Gold informed Dulczak that he was refusing to meet for a meeting scheduled for December 21, unless the Union agreed not to enter Respondent's premises until a contract was signed, because Union officials had entered Respondent's premises and interrupted employees during working hours. Gold also stated the parties elected 35 to use a mediator and Dulczak should have no reason to call Gold and all contacts should be through the mediator. Dulczak responded by letter dated December 17, disputing Gold's assertions that the Union interfered with employees working, and that he expected Gold's presence at the December 21 meeting. Gold responded by letter dated December 17, repeating the allegations in more detail. Gunning attended the December 21, meeting at the 40 mediator's office. Gold did not attend, nor did he call to cancel.

The parties had two meetings in January and a meeting was scheduled for February 8. Gold did not attend the February 8, meeting which was scheduled for 5 p.m. at the mediator's office. While Gold was alerted that morning that he was being summoned by the principle of his 45 son's school that day, Gold failed to attend the late afternoon negotiation session with no prior notice to the Union.

Dulczak sent Gold a letter dated April 8, asking for available meeting dates, to which Gold did not respond. The mediator set up a meeting for May 6, which Gold attended, but 50 which only lasted around 10 minutes. Gold was supposed to present a counter offer to the Union's proposals, however, he did not. Rather, he stated he had no records of what the parties agreed to in negotiations, or of the language that was changed from the Union's initial proposal.

Gold admitted to telling the Union that he did not take good notes of what had transpired. Gunning testified to a pattern of numerous phone calls to Gold which were not returned, and that there were only about 11 meetings during the period of April 5, 2004, to May 5, 2005, with the longest meeting being 35 to 40 minutes. Gold never prepared any counter proposals, although both the Union and the mediator asked him to do so.

Respondent argues in its post hearing brief that the Union's initial contract proposal included Respondent's participation in the Union's multi-employer pension plan, health care plan, and 401(k) plan. By letter dated May 12, Respondent requested information pertaining to all three plans, and a copy of the Union's proposed contract on disc. Respondent argues without the documents Respondent was unable to cost out the Union's demands and bargain in an attempt to reach an agreement. Respondent argues that by letter dated June 16, it renewed its information request. Respondent states that by letter dated September 4, Respondent advised the Union that Respondent had not been provided the requested health, welfare, and pension information and that the Union had not dropped the health care benefits proposal from the contract. Respondent states the Union responded that it had dropped its health care proposal. Respondent argues that even assuming the Union had dropped the health care demand, it was still had not provided the requested pension and 401(k) plan information and those demands were still on the table. Respondent argues it is willing and available to meet and bargain in good faith when it has received the requested and relevant information.

I find Respondent's contention as to the Union's contract demands and alleged refusal to provide information to be without merit. While Respondent in its brief asserts the Union still had its pension and 401(k) plan on the table as an active proposal, Gunning wrote Respondent in a letter dated June 15, "You are to consider any offer for the Health, Welfare & Pension benefits contained in the contract proposal submitted to you withdrawn as of today June 15, 2004." There was no evidence that the Union placed the pension or 401(k) proposal back on the table after June 15. The matter did not resurface again until Gold's letter to Dulczak dated October 2, which Respondent mistakenly refers to as a September 4 letter in its brief. In Gold's October 2, letter, Gold acknowledges that the Union "chose to drop the health, welfare, and pension fund out of the contract." Gold then went on to state that, "Then you changed your mind again and decided to leave the health benefit in the contract." There was no contention by Gold in the letter that the Union again placed its pension or 401(k) at issue, and Gold's claim that it had in Gold's brief is clearly disingenuous. Moreover, I find Gold engaged in a pattern of canceling meetings for a variety of reasons advanced to the Union and some for no reason at all. Most of the reasons provided were unrelated to the Union's information request.

In sum, on March 26, Gold canceled a scheduled meeting for March 29, because Gold was leaving the country on March 30. Gold cut the parties' initial meeting on April 5, short because he did not bring his glasses to the meeting. Gold failed to attend a meeting scheduled for May 25, with no notice or call to the Union. By fax dated May 25, Gold insisted that the bargaining sessions no longer be held at the Union hall. On June 16, Gold cancelled a meeting scheduled for June 18, stating he needed more time to review the Union's April 5 proposal, since the Union had withdrawn its health, welfare, and pension benefits demands. By letter received by the Union on July 27, Gold canceled an August 2, meeting stating he had to go to a furniture show. Gold failed to attend a meeting scheduled for September 9 at the mediator's office, with no notice to the Union. Similarly, Gold failed to attend a meeting scheduled for October 12, with only 10 minutes notice to the Union. No meetings were held between October 12 and January 2005. During this time Gold refused to return numerous calls from Gunning as well as some by the mediator. Gold also canceled a meeting scheduled for December 15, and failed to attend a meeting scheduled for December 21, with no notice to the Union. Gold also failed to attend a meeting scheduled for February 8, with no advanced notice to the Union. Gold

attended a meeting on May 6, which only lasted 10 minutes. Gold failed to present a requested counter proposal, stating he had no records of what the parties had agreed to or to the agreed upon language changes. Gunning testified Gold refused to meet prior to 5 p.m., that Gold failed to return numerous phone calls, and that there were only about 11 meetings between April 5 and May 5, 2005, with the longest meeting being only 35 to 40 minutes because Gold cut them short. I find that by canceling numerous meetings with many on short or no notice, limiting the number of meetings and the starting time of meetings until 5 p.m., refusing to respond to letters and phone calls from Union officials, coming to meetings unprepared, and limiting the length of the meetings that Respondent has violated Section 8(a)(1) and (5) of the Act by refusing to meet for collective bargaining at reasonable times and thereby refused to bargain.

CONCLUSIONS OF LAW

1. The Union is the collective bargaining representative of the employees in the following appropriate bargaining unit:

All full time and regular part-time production, warehouse and maintenance employees employed by Respondent at its 620 East Erie Avenue, Philadelphia, PA facility; excluding all drivers, professional employees, sales employees, office clerical employees, guards and supervisors as defined in the Act.

2. The Respondent has violated Section 8(a)(1) and (5) of the Act by since March 26, 2004, and continuing to date failing and refusing to bargain with the International Brotherhood of Teamsters, Local 837, AFL-CIO in good faith by refusing to meet at reasonable times and with reasonable frequency, canceling scheduled meetings, failing to come prepared for meetings or meet for sufficient periods of time, failing to return phone calls, and failing to reply to correspondence from the Union.

3. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall further recommend that Respondent be ordered, on request, to bargain with the Union over wages, hours, and working conditions of the employees in the above-described unit and, if agreement is reached, embody such agreement in writing. This obligation shall include ceasing the conduct leading to the unfair labor practice findings, and acceding to the Union's requests for more frequent bargaining sessions at reasonable times during the day. I shall recommend, as requested by the General Counsel, an extension of the certification year for a 6-month period to commence from the time the Respondent first begins to bargain in good faith with the Union.⁹

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

⁹ The Respondent did not raise a Section 10(b) timeliness defense to the Regional Director's reinstatement of the previously dismissed charge in Case 4-CA-33172. Thus, Respondent has waived that defense. See, *Convergence Communications, Inc.*, 339 NLRB 408, 413 (2003); and *Public Service Co.*, 312 NLRB 459, 461 (1993). Moreover, I find the remedy set forth above justified by the allegations contained in the charge in Case No. 4-CA-33602.

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and
Continued

ORDER

The Respondent, Furniture Direct, Inc., d/b/a EMES Bedding of Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the International Brotherhood of Teamsters, Local 837, AFL-CIO by: refusing to meet at reasonable times and with reasonable frequency; canceling scheduled meetings; failing to come prepared for meetings or meet for sufficient periods of time; failing to return the Union's phone calls; and failing to reply to correspondence from the Union. The appropriate collective-bargaining unit consists of the following employees:

All full time and regular part-time production, warehouse and maintenance employees employed by Respondent at its 620 East Erie Avenue, Philadelphia, PA facility; excluding all drivers, professional employees, sales employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith concerning wages, hours, and other terms and conditions of employment with the Union as the exclusive representative of employees in the above-described unit, and embody any understanding reached in a signed agreement.

(b) Within 14 days after service by Region 4, post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent on or after March 26, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 14, 2005

Eric M. Fine
Administrative Law Judge

Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT Refuse to bargain in good faith with the International Brotherhood of Teamsters, Local 837, AFL-CIO, as the exclusive representative of employees defined immediately below by: refusing to meet at reasonable times and with reasonable frequency; canceling scheduled meetings; failing to come prepared for meetings or meet for sufficient periods of time; failing to return the Union's phone calls; and failing to reply to correspondence from the Union.

All full time and regular part-time production, warehouse and maintenance employees employed at our 620 East Erie Avenue, Philadelphia, PA facility; excluding all drivers, professional employees, sales employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union, as the exclusive representative of employees in the above-described unit, as if the initial certification has been extended for an additional 6 months from the commencement of bargaining pursuant to the Board's Order in this case, and WE WILL put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

FURNITURE DIRECT, INC., d/b/a EMES BEDDING

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov. 615 Chestnut Street, One Independence Mall, 7th Floor, Philadelphia, PA 19106-4404 (215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-7643.